EDITOR'S NOTE

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Supreme Court, U.S.
FILED

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IN THE

PREME COURT OFTHE UNITED STATES

ERT C. WILSON

Plaintiff and Appellant,

vs.

HAEL D. BEGAN, OCEAN ORTHOPEDIC

Defendants and Respondents.

After A Decision By The Court Of Appeal
Second Appellate District, Division 6

APPENDIX

Robert W. Wilson
P.O. Box 9
Summerland, CA 93067
(805) 216-6860
Plaintiff/Appellant In Pro Per

Law Offices
Patterson, Ritner, Lockwood,
Gartner & Jurich
260 Maple Court, Suite 231
Ventura, California 93003-3594
(805)644-1061 Fax (805) 656-1547

FILED
OCT 31, 1997
s/ Sheila Gonzalez, Superior and
Municipal Courts Executive
Officer and Clerk

Harold H. Gartner, III (Bar No. 053579)
Charles S. Pode (Bar No. 146709)
Attorneys for Defendants
Micheal D. Began, M.D. and Ocean Orthopedic Surgery and
Sports Medical Group

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

ROBERT WILSON, JR.	) Case #CIV 136084
	)
Plaintiff,	)
	) **JUDGMENT** OF DISMISSAL
	) ON DEMURRER TO FIRST
vs.	) AMENDED COMPLAINT
	)
MICHAEL BEGAN, OCEAN	)
ORTHOPAEDIC, DOES	) Judge Barbara A. Lane
1 through 16,	) Courtroom #31
Defendants,	)

On August 15, 1997, in Department 31, of the above-entitled court, defendants MICHAEL BEGAN, M.D.and OCEAN ORTHOPEDIC AND SPORTS MEDICAL GROUP's demurrer to plaintiff ROBERT C. WILSON's first amended complaint was heard by the Honorable Barbara Lane, Judge of the Superior Court.

Appearing at the hearing were: ROBERT C. WILSON, in pro per; and Charles S. Pode of the law firm of Patterson, Ritner, Lockwood,Gartner & Jurich, representing the moving defendants.

After hearing oral argument, the matter was taken under submission by the court. On August 18, 1997, the court served its order granting the demurrer to the first amended complaint without leave to amend. In its ruling, the court held that the plaintiff sustained one injury from the defendants' alleged conduct, which gave rise to one claim, which was previously litigated by plaintiff against these same defendants in Ventura County Superior Court Case No. CIV 136084. That claim was deemed time barred by this court. That ruling was later upheld by the Court of Appeals on January 8, 1996. In plaintiff's first amended complaint in this action, Case No. CIV 170666, plaintiff's causes of action are barred by the doctrine of Res Judicata, by virtue of the judgment entered in Ventura County Superior Court Case No. CIV 136084. Furthermore, the action herein (CIV 170666) is barred by the statute of limitations.

The court retained jurisdiction over this matter (CIV 170666) pending defendants' motion for monetary sanctions under Code of Civil Procedure 128.7.

On October 3, 1997, plaintiff ROBERT C. WILSON's motion for reconsideration of the court's granting defendants' demurrer without leave to amend came on for hearing before the Honorable Barbara Lane, Judge of the Superior Court. Also held at that time was defendants' motion for monetary sanctions under Code of Civil Procedure 128.7. Present at the hearing were: plaintiff,ROBERT C. WILSON,in pro per; and Harold H. Gartner, III of the Law Firm of Patterson, Ritner, Lockwood, Gartner & Jurich, for defendants MICHAEL BEGAN, M.D.and OCEAN ORTHOPEDIC SURGERY AND SPORTS MEDICAL GROUP. The court heard oral arguments and took the matters under submission.

On October 10, 1997, the court served its order denying plaintiff's motion for reconsideration and granting defendants' motion for monetary sanctions under Code of Civil Procedure 128.7.

Not to be published

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ROBERT C. WILSON, JR.,	)	2d Civil No. B118154
	)	(Super. Ct. No. CIV170666)
Plaintiff and appellant,	)	(Ventura County)
	)	
V.	)	CLERK'S OFFICE
	)	COURT OF APPEAL-
	)	SECOND DIST
MICHAEL D. BEGAN et al.,	)	
	)	FILED
Defendants and Respondents,	)	DEC 14 1998
		JOSEPH A. LANE Clerk

Robert C. Wilson, Jr. Appeals a judgment of dismissal and an order awarding $8, 954 sanctions in favor of Michael Began, M.D.and Ocean Orthopedic Surgery and Sports Medical Group. 1 We affirm.

FACTS

On September 3, 1993, Wilson brought an action for negligence and breach of professional duty against Doctor Michael Began and Ocean Orthopedic Surgery and Sports Medical Group. (Wilson v. Began (Super. Ct. Ventura County, 1993, No. 136084).) Wilson alleged that he visited Began on December 30, 1991, for diagnosis and treatment of carpal tunnel syndrome in his wrists. Without his knowledge or consent, Began allegedly disclosed confidential information to Wilson's employer--i.e., Began's opinion that Wilson "may benefit from psychiatric consultation."

As to plaintiff's motion for reconsideration, the Court held that the motion was not timely, and that the motion presented no new relevant facts or law.

As to defendants' motion for sanctions under Code of Civil Procedure 128.7, the court held that plaintiff's pursuit of Case No.CIV 170666 was in violation of Code of Civil Procedure 128.7, that plaintiff was on notice that the lawsuit had no merit and that plaintiff was offered an opportunity to cure the violation of Code of Civil Procedure 128.7, pursuant to the "safe harbor" provision of Code of Civil Procedure 128.7, and failed to do so. In their motion for monetary sanctions, defendants demonstrated due diligence under Code of Civil Procedure 128.7 (c). The court further finds that the monetary sanctions requested were demonstrated to be reasonable. The court stated its findings in a written statement of decision. Lane.

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Judgment be entered against plaintiff ROBERT C. WILSON, and in favor of defendants MICHAEL BEGAN, M.D. And OCEAN ORTHOPEDIC SURGERY AND SPORTS MEDICAL GROUP;

2. That defendants MICHAEL BEGAN, M.D.and OCEAN ORTHOPEDIC SURGERY AND SPORTS MEDICAL GROUP are entitled to recovery of monetary sanctions in the amount of $8, 954.00, pursuant to Code of Civil Procedure 128.7; and

3. That the monetary sanctions payable to defendants MICHAEL BEGAN, M.D.and OCEAN ORTHOPEDIC SURGERY AND SPORTS MEDICAL GROUP, in the amount of $8, 954.00, shall be released by the court as applied against plaintiff's $30, 000.00 undertaking filed with this court.

DATED: October 13, 1997 S/Barbara A. Lane
Judge of the Superior Court

1 We refer to defendants jointly as "Began," except where clarity demands that we draw a distinction.

Began for summary judgment, contending, in part, that the one-year limitations period of Code of Civil Procedure sections 340 and 340.5 precluded Wilson's action. 2 The trial court agreed and granted summary judgment.

Wilson appealed. In an unpublished opinion, we affirmed the judgment. (Wilson v. Began (Jan. 8, 1996) B087557.) We reasoned that on February 19, 1992, Wilson admittedly saw a copy of the letter that Began sent to Wilson's employer the Department of Labor, Workers' Compensation Claims Office. Wilson filed the action against Began on September 3, 1993, 18 months later. Under the one-year limitations period of sections 340 and 340.5, Wilson's action was "too late". (Ibid.) We noted that Wilson contended "that Began misrepresented or concealed the existence of his letter. Assuming this to be true, the statute of limitations nevertheless commenced on February 19, 1992, when Wilson obtained a copy of the letter. [citation.]" (Ibid.)

Wilson unsuccessfully sought further review in the California Supreme Court and the United States Supreme Court. On February 7, 1997, he brought a second lawsuit against Began, likewise concerning the consultation letter. A first amended complaint alleged 11 causes of action, sounding in fraud, concealment, and civil conspiracy. Wilson alleged that Began committed fraud by sending the letter to the Department of Labor and concealing that fact from him. Wilson also alleged that he discovered the fraud on July 25, 1994, within the three-year limitations period for fraud actions. (338, subd. (D).)

Began responded by seeking an order declaring Wilson a vexatious litigant under section 391, subdivision (b) (2). Began also sought an order requiring Wilson to post a $30, 000 security deposit Pursuant to section 391.1 and a prefiling order pursuant to section 391.7.

2 All statutory references are to the Code of Civil Procedure

unless otherwise stated.

Began demurred to the first amended complaint, contending that the statute of limitations and the rule of res judicata precluded Wilson's action. Began disputed Wilson's allegation of late discovery of fraud, pointing out that the prior litigation established a discovery date of February 19, 1992, when Wilson saw a copy of Began's letter to the Department of Labor.

The trial court declared that Wilson was a vexatious litigant pursuant to Section 391, subdivision (b) (2), and ordered him to post a $30, 000 security deposit. The court reasoned that there existed "no possibility" that Wilson would prevail in the "differently labeled" second lawsuit.

The trial court also sustained the demurrer without leave to amend, concluding that the statute of limitations and the rule of res judicata barred Wilson's action. It denied Wilson's motion to file a second amended complaint and ordered dismissal of the lawsuit. The court imposed sanctions of $8, 954 against the $30, 000 security deposit. (128.7, subds. (B) (2), (c), (d).) This sum represented the costs and attorney's fees that Began expensive to defend the second lawsuit. The court denied Wilson's request for sanctions and his motion for reconsideration.

Wilson appeals and argues the trial court erred by: 1) sustaining the demurrer and dismissing the action; 2) declaring him a vexatious litigant and awarding Began costs and attorney's fees pursuant to section 128.7, subdivision (b) (2); And 3) denying his request for sanctions against Began.

By noticed motion, Began has requested that monetary sanctions be imposed against Wilson for prosecuting a frivolous appeal. (907.) Began requests that the sanctions be awarded from the security that Wilson deposited in the trial court. On October 27, 1998, we gave written notice to Wilson and Began that we are considering imposing sanctions against Wilson for prosecuting a frivolous appeal. We invited Wilson to submit a written response to Began's motion.

DISCUSSION

I.

Wilson asserts the trial court erred by sustaining the demurrer on the ground that the rule of res judicata precludes the second lawsuit. He argues that the primary right that he seeks to vindicate is different in the second lawsuit. Wilson states the first action concerned the "negligence and breach of physician duty in disclosing confidential communications" and the second, the "fraudulent withholding of evidence...regarding the disclosure of information."

We need not decide this argument because the three-year limitations period of section 338, subdivision (d), precludes Wilson's causes of action for fraud. The first lawsuit established that by February 19, 1992, Wilson knew that Began wrote to the Department of Labor and combining that he might benefit from psychiatric treatment. Wilson admitted this fact in his opposition to Began's motion for summary judgment in the first lawsuit. He cannot plead a later date of discovery now to avoid the statute of limitations.

II.

Wilson claims he is not a vexatious litigant because his second lawsuit involves a different primary right. He also claims the $30,000 security deposit was unreasonable.

The trial court's ruling was proper. (Tokerud v. Capitalbank Sacramento (1995) 38 Cal.App. 4th 775, 780 [reviewing court presumes vexatious litigant order is Brett and supported by required findings].) Section 391, subdivision (b) (2), permits the trial court to declare a person, appearing in propria persona, a vexatious litigant if he relitigates the validity of a determination against the same defendant for defendants or if he relitigates "the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants." The trial court expressly found that each lawsuit involved the same facts--"namely that Dr. Began made improper disclosures of private information." Each lawsuit also involved the factual and legal issue of the commencement of the statute of limitations.

The trial court properly granted the protective remedies provided by the vexatious litigant statutes. (391 et seq.) Section 391.3 empowers the tri court to order a vexatious litigant to furnish security for the defe. it's benefit "in such amount and within such time as the court shall fix." Section 391.3 serves to protect a defendant from the financial harm caused by a vexatious litigant. (First Western Development Corp. V. Superior Court (1989) 212 Cal.App.3d 860, 867.) The $30, 000 security deposit order here rested upon the amount of attorney's fees and costs that Began incurred in the earlier litigation. (Devereux v. Latham & Watkins (1995) 32 Cal.App.4th 1571, 1587-1588 [amount of security deposit supported by attorney's declaration of costs and fees incurred].)

Section 391.7 permits the trial court to enter a prefiling order that prohibits new litigation in propria persona without court permission. The trial court properly entered the prefiling order here.

The trial court's order imposing sanctions of $8, 954 pursuant to section 128.7 also was proper. Began gave Wilson timely written notice pursuant to section 128.7, subdivision (c) (1), that he was requesting sanctions' and Wilson responded in writing. Wilson appeared at the hearing on the matter. The amount awarded represented Began's costs and attorney's fees to defend the second lawsuit. The trial court issued detailed written findings discussing Wilson's "sanctionable conduct," including two prior warnings it gave him that his second lawsuit lacked merit.

III.

Wilson appears to contend the trial court improperly denied his motion for sanctions against Began. As discussed, Wilson's second action is barred by the statute of limitations and Began's motion for sanctions is properly brought.

IV.

Wilson raises other points that do not require discussion. The decision in the prior appeal is final and cannot be "reopen [ed]" to receive evidence. Also, we have examined the record and find that Judge Peck acted impartially in continuing Wilson's motion for

reconsideration so that Judge Lane, the trial judge who considered the demurrer and vexatious litigant motion, could consider the motion for reconsideration.

V.

On October 27, 1998, we notified Wilson and Began in writing that we are considering imposing sanctions against Wilson for pursuing a frivolous appeal. (907; Cal. Rules of Court, rule 26 (a).) At oral argument concerning this appeal, Wilson was given the opportunity to argue the matter. (Young v. Rosenthal (1989) 212 Cal.App.3d, 133 [reviewing court must provide fair warning of its intention to impose penalties for a frivolous appeal].) "Penalties for prosecuting frivolous appeals should not be imposed without giving fair warning, affording the attorney an opportunity to respond to the charge, and holding a hearing. Further, when imposing sanctions, the court should provide the attorney with a written statement of the reasons for the penalty." (In re Marriage of Flaherty (1982) 31 Cal.3d 637, 654.)

Section 907 provides: "When it appears to the reviewing court that the appeal was frivolous or taken solely for delay, it may add to the costs on appeal such damages as may be just." Wilson's appeal is frivolous because it is "totally and completely without merit." (In re Marriage of Flaherty, supra, 31 Cal.3d 637, 650.) In the first appeal, we concluded that Wilson's action against Began was time barred, given his written admission that he saw a photocopy of Began's letter on February 19, 1992. In the current action, the trial court advised Wilson on several occasions that his action was concluded by the statute of limitations and res judicata. He nevertheless pursued this appeal. Although Wilson is not an attorney, he is held to the same procedural rules. (Leslie v. Board of Medical Quality Assurance (1991) 234 Cal.App.3d 117, 121.) By continuing to pursue this matter, he ignores well-settled law and forces Began to expend financial resources to respond to a statute of limitations issued that we previously decided.

In determining the issue of sanctions, we are guided by the policy of section 907. Imposition of sanctions for the pursuit of a frivolous appeal serves to discourage the frivolous appeal and to

compensate the respondent for defending against it. (Young v. Rosenthal, supra, 212 Cal.App.3d 96, 134.) Sanctions properly may be measured by the reasonable attorney's fees and costs incurred by respondent in defending the appeal. (Ibid.)

We direct the trial court to determine the amount of Began's reasonable costs and attorney's fees expended in defending this appeal. This amount is to be awarded from the security deposit that Wilson has deposited in the trial court.

The judgment of dismissal and order imposing $8, 954 sanctions are affirmed. Began shall recover costs and attorney's fees on appeal as stated herein.

NOT TO BE PUBLISHED.

GILBERT, J.

We concur:

STONE, P.J.

YEGAN, J.

Robert C.Wilson
P.O.Box 9
Summerland, CA 93067
1 (800) 577-7468 pin #3932859
PLAINTIFF IN PRO PER

VENTURA COUNTY
SUPERIOR & MUNICIPAL COURTS
FILED
MAY 22, 1997
Shiela Gonzalez, Superior Municipal Courts Executive Officer and Clerk
S/L. Guerech

SUPERIOR COURT OF STATE OF CALIFORNIA

COUNTY OF VENTURA

ROBERT C. WILSON) CASE NO. CIV 170666
Plaintiff,) **AMENDED COMPLAINT-FRAUD**
vs.) **MISREPRESENTATION,**
MICHAEL BEGAN) **CONCEALMENT,**
OCEAN ORTHOPAEDIC) **FALSE PROMISE,CONSPIRACY,**
SURGERY AND SPORTS) **NEGLIGENCE**
MEDICAL GROUP DOES) **Judge Barbara A. Lane**
1 through 22 , Defendant (s)) **Courtroom #31**
_____)

1. Plaintiff complains and alleges as follows:

2. Defendant MICHAEL D. BEGAN is a physician duly licensed

to practice in the State of California.

At all times mentioned herein his office was located in Ventura County, California.

3. Defendant OCEAN ORTHOPAEDIC SURGERY AND SPORTS MEDICAL GROUP is a partnership, with Michael D. Began and Thomas F. Golden as general partners.

4. Plaintiff on or about September 10, 1991, realized that he had tissue stress that was caused or aggravated by his employment and made a claim to the US Department Of Labor.

5. Plaintiff consulted with Defendant on or about December 30, 1991, on the referral of his primary care physician's assistant.

6. Defendant did not tell plaintiff of his intentions, test results, diagnosis, suggestions for future care, or conclusions regarding plaintiff's injury. Defendants denied sending report to plaintiff's work comp carrier. They only admitted sending report to plaintiff's primary care physician,. They did this to induce plaintiff into believing plaintiff's primary care physician sent report to plaintif's employer or work comp carrier. Even though defendants (Ann, an employee of defendants) told plaintiff that there would be no report (During deposition , She could not recall informing plaintiff there"would be no report") Ann did not inform plaintiff that she

had spoken with defendant Began and therefore could not "speak for defendant". Plaintiff did not perceive harm by defendant Began's disclosure to plaintiff's primary care physician. Additionally, the fraud complained of was not that defendant Began wrote the report, but was that the report was sent to plaintiff's work comp carrier.

7. Plaintiff did not discover fraud and deceit practiced on him that subsequently significantly damaged him until after July 25, 1994, because that was when when defendant's council provided a copy of defendant's bill for medical services dated January 7, 1992. Plaintiff had requested a copy of his mdical file on September 3, 1992, and defendants provided only report stating "that's all there is ". When plaintiff discovered on February 8, 1994, (in plaintiff's employer's file) that plaintiff's work comp carrier had informed plaintiff's employer on February 27, 1992, they were going to deny plaintiff's claim because plaintiff's problems "may be psychological" only meant that either defendants or plaintiff's primary care physician had sent defendant Began's report to plaintiff's work comp carrier. Plaintiff could not have discovered with reasonable diligence said fraud and deceit of February 8, 1994, because plaintiff was previously informed by letter from his work

comp carrier on March 4, 1992, that his claim was approved. On February 8, 1994 plaintiff contacted Mary Wedel, U. S. Navy injury claims program administrator about his claim file. Mary told plaintiff she would leave plaintiff's file by her desk. Plaintiff went to Mary's office and saw in his file a conversation documented between Tim Dahlstrom and Joe Alig dated February 27, 1992. Tim told Joe he was planning to deny Wilson's (plaintiff's) claim because Wilson's problem may be psychological. Plaintiff started to take his file to copy machine to copy said conversation. Mary, when she saw plaintiff trying to copy said conversation, attempted to bar plaintiff. After plaintiff copied said conversation, Mary demanded plaintiff return copied document stating he didn't have a right to said conversation. Plaintiff refused. When Mary provided plaintiff with copy of work comp claim file from her office on February 17, 1994, said conversation was not there. Plaintiff requested said conversation from Mary. Mary refused stating plaintiff had no right to document". After plaintiff obtained said conversation he was required to obtain a pass prior to leaving his office. When plaintiff obtained a copy of his work comp claim file from his work comp carrier in June 1992, defendant Began's report was not there. There was no record of conversation dated

February 27, 1992 of Tim Dahlstrom informing Joe Alig that he was going to deny plaintiff's claim because "Wilson's problems may be psychological". Plaintiff had never seen and did not know of this conversation until February 8, 1994. Plaintiff could not have discovered said fraud and deceit of July 25, 1994, because defendants informed plaintiff that they would bill plaintiff for the office visit of December 30, 1991, after they had already sent report and billed plaintiff's work comp carrier for the office visit. Defendants began billing plaintiff in February 1992. On September 3, 1992, defendants again informed plaintiff that because plaintiff had requested to be billed for office visit of December 30, 1991, report had not been sent to plaintiff's work comp carrier. Defendants did not provide a copy of medical bill dated January 7, 1992, to plaintiff on September 3, 1992. Since plaintiff obtained a copy of his work comp claim file from his work comp carrier in June 1992 and defendant Began's report was not in the work comp claim file, plaintiff justifiably relied on defendant's concealment. Plaintiff did not obtain a copy of defendant's medical bill dated January 7, 1992, from defendant's counsel until after July 25, 1994. It is custom and practice to send report with bill to insurance carrier. Finally, when plaintiff deposed defendant's in June 1994,

they denied there was a medical billing done "right away" in plaintiff's case. Plaintiff had previously requested a medical bill(not knowing if it existed) in 2 motions to compel, which were denied by the trial court. After defendants described a medical billing document during deposition (during the time the trial court's denial of plaintiff's request was in effect) plaintiff again (in July 1994) requested the trial court compel defendants to provide copy of medical bill. Plaintiff further asserts that if the Courts believe there is insufficient information on essential averments for fraud or that res judicata applies,then it is the responsibility of the Courts for insufficient information or res judicata because: plaintiff requested Trial Court continuance in accordance with CCP 437c(h), which was denied and trial court abused discretion by determining pleadings were defective after adjudication the issue, both of which Appellate Court overlooked even though there is no dictum for summary judgment review; Appellate Court "Independant Review" negated rightful reversal, specifically there was a triable issue of material fact underlying the pleadings in the evidence submitted to the Appellate Court; California Supreme Court Review of CCP 437c (h) and "Independent Review", even though review is to be ordered where important questions of law are raised, was denied

even though they have no dictum; U.S. Supreme Court due process Review, even though question presented was whether a State Appellate Court could negate an appeal even though there was sufficient evidence to warrant reversal, was denied.

8. At the time said representations were made by defendants, a fiduciary relationship existed between plaintiff and defendants in that defendants were health care professionals and had a fiduciary duty to disclose information to plaintiff, their patient. Defendant Began did not inform plaintiff of his diagnosis, suggestions for future care, and conclusions regarding plaintiff's injury. Defendant Began did not question plaintiff's prior authorization for release to his insurance carrier. Defendant Began did not propose to plaintiff his intentions or treatment. Defendant Began only informed plaintiff that he would send a note to plaintiff's treating physician. Defendant Began did not say what the contents of the note would be. Defendant Began did not inform plaintiff that he had a history of denying his patient's work comp claims.

9. Upon learning of said fraud, plaintiff began suffering significant damages as follows: plaintiff was placed under a supervisor (that wrote a letter in March 1994 to plaintiff's evaluating physician stating that he (supervisor) believed that there was a strong

"psychological" component to plaintiff's injury) for 2 official Performance Improvement Periods (PIP s)-one in February 1994 and one in October 1994, the second one was where most of the physical injury occurred, plaintiff was fired from his employer in April 1995, plaintiff's physical injuries worsened during the PIPs such that plaintiff is now medically disabled from work (assessment conducted on March 1996), plaintiff's economic income has suffered severely as a result of the disability (plaintiff's income is now 40 percent of income at time of employment, and plaintiff suffered emotional distress. Plaintiff is now very suspicious of doctors and people in general. Plaintiff had trouble finding a physician in Ventura County to evaluate plaintiff's medical disability after he (plaintiff) originally filed suit against defendant Began. Plaintiff had to go out of the county to find a physician to evaluate plaintiff's medical disability claim, which was approved several months later. Plaintiff suffered substantial injury caused by defendant's conduct. Plaintiff's work comp carrier did not provide schedule award until a year and a day after plaintiff discovered the conversation between Tim Dahlstrom and Joe Alig of February 27, 1992. Plaintiff had very little money in the bank with no prospect for work because he could not work on account of his injuries. The

aforementioned facts are not inclusive of all injury and emotional distress suffered by plaintiff.

FIRST CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION

10. Defendant(s) made representations of material fact as follows: Defendant Began did not tell plaintiff during office visit of December 30, 1991 that he could "not do anything for him orthopedically" and plaintiff could "benefit from a psychiatric consultation". Defendant Began did not inform plaintiff that he was going to send a report to plaintiff's work comp carrier. Defendants represented to plaintiff that they would bill plaintiff for office visit on December 30, 1991. Plaintiff began receiving bill from defendants for office visit of December 30, 1991 in February 1992. On September 3, 1992 plaintiff obtained a copy of his medical file from defendants. Defendants provided plaintiff with only a copy of defendant Began report of December 30, 1991. Defendants also told plaintiff that they withheld report and billed plaintiff for office visit of December 30, 1991, at request of plaintiff. It is custom and practice to send report with bill to insurance carrier. Finally, when plaintiff deposed defendant's in June and July 1994, they denied there was a medical billing done

"right away" in plaintiff's case. Plaintiff had previously requested a medical bill(not knowing if it existed) in 2 motions to compel, which were denied by the trial court. After defendants described a medical billing document during deposition (during the time the trial court's denial of plaintiff's request was in effect) plaintiff again (in July 1994) requested the trial court compel defendants to provide copy of medical bill.

Defendant's representations were in fact false. The truth was as follows: Plaintiff discovered on February 8, 1994, that U.S.Labor informed plaintiff's employer on February 27, 1992, that they were going to deny plaintiff's claim because plaintiff's "problem may be psychological". Plaintiff did not discover until after July 25, 1994, when defendant's counsel sent plaintiff a copy of medical bill dated January 7, 1992, of office visit of December 30, 1991. On July 1994, during deposition, plaintiff discovered that defendant Began had seen other patients "claiming a work injury" and that "they were denied".Defendants had a fiduciary responsibility to inform plaintiff. When plaintiff obtained a copy of his work comp claim file from his work comp carrier in June 1992, defendant Began's report was not there. There was no record of conversation dated February 27, 1992 of Tim Dahlstrom informing Joe Alig that he

was going to deny plaintiff's claim because "Wilson's problems may be psychological". Plaintiff had never seen and did not know of this conversation until February 8, 1994. When defendants made the representations, defendants had no reasonable ground for believing the representations were true. Defendants made the representations with the intent to defraud and induce plaintiff to act as described in paragraph 21.

SECOND CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION

THIRD CAUSE OF ACTION FOR CONCEALMENT

FOURTH CAUSE OF ACTION FOR FALSE PROMISE

FIFTH CAUSE OF ACTION FOR CONSPIRACY TO CONCEAL

Robert C. Wilson
P.O.Box 9
Summerland, CA 93067
(805) 969-7165
Plaintiff in Pro Per

FILED
Sep - 3 1993
Sheila Gonzalez, Superior Court
Executive Officer and Clerk
By s/Renee Buenos, Deputy

Assigned Courtroom 21 Hunter

SUPERIOR COURT OF CALIFORNIA

COUNTY OF VENTURA

ROBERT WILSON, JR.	) CIV 136084
	)
Plaintiff,	) **COMPLAINT**
	)
vs.	) 1. **Negligence**
	) 2. **Breach of Professional Duty**
MICHAEL D.BEGAN, M.D.,	)
OCEAN ORTHOPEDIC	)
SURGERY AND SPORTS	)
MEDICAL GROUP and Does	)
1 through 20, Inclusive,	)
Defendants,	)

Plaintiff complains and alleges as follow:

1. Plaintiff is a competent adult and resident of California.

2. Defendant MICHAEL D.BEGAN is a physician duly licensed to practice in the State of California. At all times mentioned herein his office was located in Ventura County, California.

3. Defendant OCEAN ORTHOPEDIC SURGERY AND

had disclosed confidential communications and records and information regarding his health to his employer.

12. As a proximate result of said disclosure Plaintiff's relations with his employer were adversely affected and Plaintiff suffered economic damages and emotional distress in a sum in excess of the minimum jurisdiction of this Court.

First Cause Of Action For Negligence

13. Plaintiff alleges and incorporates by reference the common allegations.

14. Defendants know or should have known that Plaintiff might incur damages if his confidential information was disclosed.

15. Defendants failed to exercise reasonable care and were negligent in the handling of Plaintiff's confidential information.

16. As a proximate result of Defendants' negligence Plaintiff's confidences were disclosed to his employer and Plaintiff suffered damages as set forth in the common allegations.

Second Cause Of Action For Breach Of Professional Duty

17. Plaintiff is informed and believes and based thereon alleges that Defendants willfully caused the disclosure of confidence regarding Plaintiff's health.

18. Plaintiff is informed and believes and based thereon alleges that such disclosure constitutes a violation of Business and Professions Code Section 2263 and 2963 precluding the wilful unauthorized violation of professional confidences.

19. As a proximate result of Defendants' conduct Plaintiff

SPORTS MEDICAL GROUP is a business entity in Ventura County the exact form of which is presently unknown to Plaintiff.

4. Plaintiff is informed and believes and based thereon alleges that each of the Defendants was at all times mentioned the agent and employee of the remaining Defendants acting in the course and scope of such agency and employment.

5. Plaintiff is informed and believes and based thereon alleges that the Defendants were joint venturers.

6. Except as otherwise expressly alleged herein Plaintiff is unaware of the true names and capacities of Defendants sued herein as Does 1 through 20 and therefore sues said Defendants by such fictitious names. Plaintiff will seek leave to amend the complaint to state the true name and identity when same is ascertained. Plaintiff is informed and believes and based thereon alleges that each of the fictitiously named Defendants resides or engages in business in California and is responsible for the injuries set forth herein.

7. Plaintiff on or about September 10, 1991 realized that he had tissue stress that was caused or aggravated by his employment and made a claim to the US Department of Labor.

8. Plaintiff consulted with Defendant on or about December 30, 1993.

9. Plaintiff confided in Defendants as his physician and health care provider and anticipated that Plaintiff would not disclose the information that was so confided.

10. Plaintiff did not consent to the disclosure of Plaintiff's confidential communications and information regarding his health to his employer.

11. On September 3, 1992 Plaintiff ascertained that Defendant

suffered the damages set forth in the common allegations.

WHEREFORE, Plaintiff prays for damages against Defendants and each of them as follows:

1. For general damages in a sum in excess of the minimum jurisdiction of this court;
2. For costs;
3. For such other and further relief as the court deems just and proper.

Dated: September 3, 1993

s/ Robert Wilson, Jr.
Plaintiff in Pro Per

DECLARATION OF ROBERT C. WILSON, JR.

I, Robert C. Wilson, Jr., declare:

1. I am the Plaintiff in Pro Per in the Ventura County Superior Court Case No. CIV136084, entitled Wilson v Began,M.D., et al. I have personal knowledge of the facts stated in this Declaration and if called upon will testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the complaint filed in this action on September 3, 1993.

3. Attached hereto as Exhibit B is a true and correct copy of the answer filed by Dr. Began on November 30, 1993.

4. Attached hereto as Exhibit C is a true and correct copy of the answer filed by Ocean Orthopedic Surgery and Sports Medical Group on December 30, 1993.

5. Attached hereto as Exhibit D are true and correct copies of excerpts of my original deposition transcript. I was present for the entirety of the deposition and declared that the foregoing testimony was true and correct.

6. Attached hereto as Exhibit E are true and correct copies of deposition transcript of Amparo Leon. I was present for the entirety of the deposition and declared that the foregoing testimony was true and correct.

7. Attached hereto as Exhibit F are true and correct copies of deposition transcript of Dr. Michael Began. I was present for the entirety of the deposition and declared that the foregoing testimony was true and correct.

8. Attached hereto as Exhibit G are true and exact copies of documents from my workers' compensation claim file I

obtained from my employer and the U.S.Department of Labor.

9. **Dr. Began did not inform me** that he believed (1) he could not do anything for me orthopedically and (2) I could benefit from a psychiatric consultation during my office visit with him on December 30, 1991.

I declare under the penalty of perjury under the laws of the State of California, the foregoing is true and correct.

DATED: July 29, 1994

s/Robert C. Wilson, Jr.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

COURTROOM 31 **HON. BARBARA A. LANE, JUDGE**

ROBERT WILSON, JR.,	)	
	)	
Plaintiff,	)	**Ventura County**
	)	**No. 170666**
vs.	)	
	)	
MICHAEL D. BEGAN, M.D. et al.,	)	
	)	
Defendants,	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
of
May 30, 1997

APPEARANCES:

For the Plaintiff: *IN PRO PER*

For the Defendants: *PATTERSON, RITNER,LOCKWOOD GARTNER & JURICH*
BY: Charles S. Pode
Attorney at Law
260 Maple Court Suite 231
Ventura, CA 93003-3594

Reported by: *Joe M. Rivas*, CSR 10347
Official Reporter Pro Tempore

Ventura, California; Friday, May 30,1997

A.M. SESSION

THE COURT: Wilson versus Began, 170666.

MR. WILSON: Robert Wilson, plaintiff in pro per

MR. PODE: Good morning, your honor. Charles Pode representing Micheal Began, M.D. Let me read this because I'll get it mixed up. Ocean Orthopedic Surgery and Sports Medical Group.

THE COURT: Okay. The tentative is against you. I carefully looked at all the papers, Mr. Wilson, and this does appear to be the same lawsuit you've previously taken all the way to the U.S. Supreme Court and with them denying a writ of certiorari on December 2nd of 1996. It deals with the same facts and circumstances. So I'm tentatively thinking today of dismissing your action.

MR. WILSON: Your Honor, if I could provide--I received--

THE COURT: Strike that. I misspoke myself. I cannot dismiss the action because you filed a first amended complaint. I'm tentatively thinking today of declaring you a vexatious litigant and requiring you to post a $30,000 bond, which is the attorney's fees in defending the prior action, as a condition to your proceeding in this action.

MR. WILSON: Your Honor, if I may, since I did not receive the defendant's counsel's reply to my opposition papers

Superior Court of California, County of Ventura

Judge: Barbara A. Lane Date: June 4, 1997
Clerk: Rosaura Corona Ct. Reporter: Case No:170666

Type of case:

Robert C. Wilson,
vs.
Michael Began, Ocean Orthopedic
Does 1 through 16,

Nature of Proceedings: Ruling on Defendants' Motion to Declare Plaintiff Wilson a "vexatious litigant" and To require posting of a bond.

The motion of defendants Michael Began, M.D. and Ocean Orthopedic Surgery and Sports Medical Group, which included a demurrer, a motion to strike and a motion to declare plaintiff Robert C. Wilson a "vexatious litigant", came on for hearing on 5/30/97. The demurrer and strike motions went off calendar, as moot, the plaintiff having filed a first amended complaint on 5/22/97.

Having taken the vexatious litigant issue under submission for further consideration, the court now grants the defendants' motion to declare the plaintiff Robert C. Wilson a vexatious litigant.

The court grants the defendants' request for judicial notice of plaintiff Wilson's prior Ventura Superior Court case no. 136084 entitled Robert Wilson, Jr., vs. Michael D. Began, M.D., Ocean Orthopedic Surgery and Sports Medical Group and "Does", filed 9/3/93; Mr. Wilson's response to defendants' "separate statement of undisputed facts" regarding defendants' summary judgment motion in that case (containing admissions by Mr. Wilson); and

the decisions of the Court of Appeal, filed 1/8/96 (affirming the trial court's grant of the defendants' summary judgment motion), the California Supreme Court (denying Mr. Wilson's petition for review on 4/10/96) and the U.S. Supreme Court (denying a writ of certiorari firm the court clerk's letter of 12/2/96), on appeal of case no.136084.

The court makes findings in the present case no. 170666 as follows:

1. Mr. Wilson's present complaint in case no. 170666 involves the same facts, as shown by the pleadings and by Mr. Wilson's oral presentation to the court (court-reported at the 5/30/97 hearing), as were the basis of Mr. Wilson's prior complaint in case no. 136084.

2. The trial court granted the same defendants', Dr. Began's and his orthopedic group's, motion for summary judgment in the prior case, based on the bar of the statute of limitations. That decision was affirmed by an unpublished opinion of the Court of Appeal, Second Appellate District, Division Six, in 2d Civil no. B087557, filed 1/8/96.

3. If this court were to hear the defendants', Dr. Began's and Ocean Orthopedic's, demurrer, it would sustain the demurrer, without leave to amend, based on the statute of limitations bar and based on the doctrine of res judicata.

4. The court finds that there is no possibility that the plaintiff Mr. Wilson will prevail in the present action, as these same issues were resolved against the plaintiff in his prior lawsuit. While the theory of liability is differently labelled, Mr. Wilson is seeking to re-allege in this case no. 170666 the same grievances that he alleged against Dr. Began and his medical group in his prior case no. 136084, namely that Dr. Began made improper disclosures of private information (in what Mr. Wilson contends

was not a worker's compensation case) to Mr. Wilson's employer, the Navy, *resulting*, Mr. Wilson contends, in his being fired.

For these reasons, the court concludes that Mr. Wilson is a "vexatious litigant" under C.C.P. 391 (b) (2). Therefore, the court orders this lawsuit, Case no. 170666 stayed, unless and until Mr. Wilson posts undertaking, in the amount of $30, 000.00, with the court. To proceed in this case no. 170666 lawsuit, and avoid the stay, Mr. Wilson is ordered to post an undertaking, in cash or by a qualified surety, in the amount of $30, 000.00, not later than 7/3/97 at 3:00 p.m.

The "vexatious litigant" statutes do not appear to authorize the dismissal of this action. The court does direct, however, that the plaintiff is barred from filing any other lawsuit against these defendants only, Michael Began, M.D.and Ocean Orthopedic Surgery and Sports Medical Group erroneously sued as "Ocean Orthopedic"), in any court of the State of California, unless he has obtained a pre-filing order from the presiding judge of the court (see C.C.P 391.7).

The clerk shall serve copies of this ruling on the parties. IT IS SO ORDERED.

S/Barbara A. Lane
Judge of the Superior Court

Sheila Gonzalez, Superior Court
Executive Officer and Clerk

By: s/ Rosaura Corona
Deputy Clerk

Second Appellate District, Division Six, No. B118154

Court Of Appeal

Robert Wilson Jr., Petitioner

V

Michael D.Began,, Respondents

FILED
July 7, 1997
Joseph Lane, Clerk

Petition for Writ of Mandate/Prohibition DENIED

Stone
P. Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT DIVISION SIX

ROBERT C. WILSON, JR.,	)	2d Civil No. B118154
	)	(Super. Ct. No. CIV170666)
Plaintiff and appellant,	)	(Ventura County)
V.	)	CLERK'S OFFICE
	)	COURT OF
APPEAL-	)	
SECOND DIST		
MICHAEL D. BEGAN et al.,	)	ORDER
	)	FILED
Defendants and Respondents,	)	JUL 13 1998
		Robert N. Wilson, Clerk
		Mary J. Rosa, Deputy Clerk

Respondents have moved to dismiss this appeal on the ground that appellant has not received permission to proceed with this appeal as required by Code of Civil Procedure section 391.7. Appellant opposes the motion.

Cause appearing, respondents' motion to dismiss is DENIED on the condition that the funds deposited by appellant with the Clerk of the Superior Court (totaling $21, 046.00) remain on deposit throughout the pendency of this appeal as security for any costs incurred by respondents in defending this appeal in the event this court determines it is frivolous. (Code of Civ. Proc., 391.7, sub d.(b).) Appellant's request that we schedule oral argument on this motion is DENIED.

Further, the procedures set forth in California Rules of Court, rule 26 (e), shall govern any request by respondents that sanctions be imposed against appellants for prosecuting this appeal.

Appellant's request for an extension of time within which to file the opening brief is GRANTED. Appellant shall have thirty (30) days from the date of this order within which to serve and file the opening brief. S/STONE Presiding Justice

State of California
Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, CA 94105
(415) 904-3650
Fax (415) 904-3666

April 21, 1997

Robert Wilson
P.O. Box 9
Summerland, CA 93067

Dear Mr. Wilson:

your complaint dated February 4, 1997.

Your complaint addresses, in part, legal rulings made by three judges. Ordinarily, individual legal rulings are not a basis for review by this commission which is not a court and does not have the authority to reverse legal rulings or intervene in legal proceedings.

We do appreciate your time and effort in bringing this matter to the commission's attention.

Very truly yours,

Colette Brooks
Staff Counsel

Confidential under California Constitution
Article VI, Section 18, and Commission Rule 102

Declaration of Robert C. Wilson Jr.

I, Robert C. Wilson, Jr., declare:

1. I am the petitioner of the within case entitled, Robert C. Wilson, Jr. vs. Micheal D. Began, Ocean Orthopedic Surgery and Sports Medical Group.

2. In November 1998, I appeared before Justices Gilbert, Stone, and Yegan. They were the same Justices that wrote the opinion of my previous appeal that I filed a complaint with the Commission on Judicial Performance.

3. At the oral argument hearing of November 1998, I started to present my case. Shortly after I began, Justice Gilbert interrupted me and yelled, "get an attorney!" I started to ask questions and was told by Justice Gilbert that only he could ask questions. When I attempted further dialogue, Justice Gilbert again yelled at me to "get an attorney!" I then attempted dialogue with Justice Yegan and was cut short by Presiding Justice Stone and informed that I should "sit down". Because of the hostility exhibited at me by Justices Gilbert, Stone, and Yegan, I was unable to give a complete presentation.

Dated: August 27, 1999

S/ Robert C. Wilson, Jr.
Declarant

Case # B118154

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 6

ROBERT C. WILSON
Plaintiff and Appellant,

vs.

MICHAEL D. BEGAN, OCEAN ORTHOPEDIC
Defendants and Respondents.

APPEAL FROM THE SUPERIOR COURT FOR VENTURA COUNTY
CASE NO. CIV 170666
BARBARA A. LANE, JUDGE

APPELLANT'S PETITION FOR REHEARING

Robert C. Wilson
Plaintiff/Appellant in Pro Per

Case # B118154

COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION 6

ROBERT C. WILSON
Plaintiff and Appellant,

vs.

MICHAEL D. BEGAN, OCEAN ORTHOPEDIC
Defendants and Respondents.

APPEAL FROM THE SUPERIOR COURT FOR VENTURA COUNTY
CASE NO. CIV 170666
BARBARA A. LANE, JUDGE

APPELLANT'S PETITION FOR REHEARING

Robert C. Wilson

Plaintiff/Appellant in Pro Per

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SECOND APPELLATE DISTRICT

DIVISION 6

ROBERT C. WILSON
Plaintiff and Appellant,

vs.

MICHAEL D. BEGAN, OCEAN ORTHOPEDIC
Defendants and Respondents.

APPELLANT'S PETITION FOR REHEARING; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

I. INTRODUCTION

Plaintiff and Appellant ROBERT C. WILSON (hereinafter referred to as "WILSON") hereby submits this Petition for Rehearing to the Second Appellate District, Division 6, of the Court of Appeals of the State of California. The grounds for this petition are the deciding justices were biased against WILSON for being previously reported to the Commission for Judicial Performance by WILSON and there are numerous omissions of material facts and evidence in the decision recently rendered in favor of Defendants and Respondents OCEAN ORTHOPEDIC SURGERY AND SPORTS MEDICAL GROUP (hereinafter referred to as "BEGAN") .

BY THIS PETITION, WILSON requests a new unbiased panel of deciding officials.

DATED: December 28, 1998

ROBERT C. WILSON
Plaintiff and Appellant in pro per

MEMORANDUM OF POINTS AND AUTHORITIES
I. PROCEDURAL HISTORY

On February 4, 1997, WILSON wrote to the Commission on Judicial Performance regarding the actions of Gilbert, Stone & Yegan in the prior appeal of the original action against BEGAN for negligence in disclosing confidential communication. Evidence Code 992 and 994 and Britt v Superior Court (1978) applied to that action regarding the pleadings. Specifically, WILSON noted that Gilbert altered the evidence as the author in the opinion of the prior appeal, Justice Yegan "laughed at WILSON" during oral arguement of the prior appeal, and the prior appeal had sufficient evidence to warrant reversal. In April 1997, WILSON was informed by the Commission on Judicial Performance that they had conducted an investigation regarding the actions of Justices Gilbert, Stone, and Yegan.

On February 7, 1997, WILSON filed a new complaint against BEGAN for Fraudulent witholding of information the was not confided to WILSON, namely that BEGAN misrepresented to WILSON they withheld sending report from U.S. Labor and only billed WILSON. The report contained information that BEGAN did not confide to WILSON during the office visit. Judge Lane granted BEGAN's request for demurrer on basis of res judicata and statute of limitations. WILSON appealed.

On May 18, 1998, BEGAN Defendants filed a Motion to Dismiss the appeal on the basis the litigation was "frivolous". On July 13, 1998, this Court stated, "Cause appearing, respondent's motion to dismiss is DENIED on the condition the funds deposited by appellant remain on deposit ....in the event this court determines it is frivolous". This Court's opinion was based on 391.7(b), which

states that " the presiding judge shall permit the filing of such litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay".

During oral arguement on November 19, 1998, WILSON was informed by Presiding Justice Stone that the deciding officials would be Justices Gilbert, Stone, & Yegan. As the video will demonstrate, during oral arguement Justice Gilbert was "openly hostile" to WILSON by yelling at WILSON several times to "get an attorney". Justice Stone cut WILSON's presentation short by interrupting and telling him "he should set down". Justice Stone further interrupted WILSON's oral presentation by preventing WILSON's attempt to dialogue with Justice Yegan.

III. LEGAL DISCUSSION

IV. THE DECIDING JUSTICES WERE BIASED AGAINST WILSON AND ARE RETALIATING FOR BEING PREVIOUSLY INVESTIGATED BY THE COMMISSION REGARDING WILSON'S PRIOR APPEAL.

As noted, the previous appeal was authored by Justice Gilbert, with Justices Stone and Yegan concurring. WILSON complained to the Commission that Justice Gilbert had altered some of the evidence and Justice Yegan "laughed at WILSON" during oral arguement of the prior appeal in December 1995. Wilson also complained that there was sufficient evidence to warrant a reversal.

V. THERE ARE NUMEROUS OMISSIONS AND MISTAKES OF LAW,MATERIAL FACTS, AND EVIDENCE

C. The Appellate Court Opinion ignored the fact that the current complaint is a different cause of action because it involves different rights under the Evidence Code and existing case law.

As noted in the previous complaint, Plaintiff's action was for negligence and breach of physician duty in disclosing confidential communications (rights specifically tied to Evidence Code 992 and 994, to which BEGAN (citing Britt v Superior Court (1978) pleaded that when a patient "tenders the issue they waive their right to claim privilege to confidential communications. The current complaint is for information disclosed by BEGAN to WILSON's employer that was not communicated to WILSON and therefore is a different cause of action because Evidence Code 992, 994, and Britt do not apply.

D. The issues in the prior judgment are not identical with the issues in the current action.

As noted in Fairchild v. Bank of America (165 CA 2d 477) "Fairchild", the court stated "there are three pertinent questions in determining the validity of a plea of res judicata

1. Were the issues decided in the prior adjudication identical with the issues presented in the later action?

2. Was there a final judgment on the merits?

3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?". Fairchild at 477.

The pleadings define the issues for summary judgment. For the previous action, BEGAN DEFENDANTS moved for summary judgment by pleading that WILSON's complaint of negligence and breach of physician duty regarding disclosure of confidential communications to WILSON's employer, even though time barred since WILSON had been placed on notice of certain facts (C.T. 76-81), a patient waives their rights to physician-patient privileged information because they "put in issue" the physical condition when alleging work injury. See Britt at 849.

Utilizing the independent review approach to summary judgments, this court identified the following issues framed by the pleadings of negligence regarding confidential communications:

1. On January 6, 1992, he knew that a Navy claims administrator had spoken with an employee in Dr. Began's office.

2. On January 14, 1992, he suspected his supervisor knew of or had read Dr. Began's letter because his supervisor recommended counseling.(Actually, this fact is skewed per pleading of the current action. (See C.T .p. 336,lines 4-16.)

3. On February 19, 1992, Wilson obtained a copy of the letter and saw its addressee.

Therefore, the issues framed by the pleadings of negligence regarding confidential communications which this court identified in their independent review approach were not identical with the issue presented in the current action, namely that BEGAN DEFENDANTS did not inform WILSON of the information in the report that was disclosed to WILSON's employer. (See WILSON's current complaint and. Request for Judicial Notice of Ventura County Court Case No. 136084, WILSON Declaration in Opposition to Summary Judgment dated June 23, 1994)

E. Wilson was unable to address the issue that could have reversed the prior judgment.

As noted in WILSON's opposition to motion to dismiss, WILSON informed this court that he would demonstrate that he was unable to address the "justiciable" res judicata issues in the prior appeal, namely this court's assertion that "Wilson failed to show how the deposition of the Navy administrator would bear on his discovery of the Began letter."

WILSON respectfully requests this court review paragraph 1 of

(WILSON's) attached declaration and note that this court's erroneous citation of WILSON's claim of bias because of Judge Hunter's statements " I just can't figure out.." is in close proximity to this court's assertion that "Wilson failed..."

Although WILSON realizes this court meant well when they wrote the second sentence of paragraph 2 of part II (discussion) on page 6 of their opinion, it was written concurrently with the first paragraph of part III (discussion), which was not Judge Hunter's statement according to the record.. This had the effect of placing a wall between WILSON and his ability to cite the evidence already in the record that would "establish that facts to be discovered would justify opposition", as part of the opening and reply brief.

At this point, appellant respectfully raises the following issue regarding the independent review of summary judgments;

According to CRC , a court may upon its own motion reopen a case.

According to several appellate court opinions regarding summary judgment review, where possible or where doubt exists the judgment is in favor of the party opposing the summary judgment motion.
Could this court have independantly reopened the prior case and called attention to the evidence that would justify reversal? If so, why didn't they?

In his opposition to motion to dismiss, WILSON contended the answer to the above question may be because of another issue raised by this court in their opinion "Wilson contended that Began concealed or misrepresented the existence of his letter", because this court was concerned that reversal would not be merited since any misrepresentation claim would have been barred by the statute of limitations. WILSON attempted to provide this court with additional evidence regarding a claim of fraud via a request to take

additional evidence, which this court denied. WILSON did not address this (fact)issue in his brief (neither did BEGAN DEFENDANTS) and concluded that this court would not address the issue of fraud in their opinion and therefore did not "see" this issue.

There was no evidence in the original action as to when the misrepresentations of the existence of report or billing for services occured. The point of this is that any misrepresentations (or claim thereof) are tolled according to the first act of misrepresentation , presumably that contains all the elements of misrepresentation. However, WILSON has pleaded around and provided the evidence which demonstrates the existence of the letter was in fact not a misrepresentation. See Dolinar v Pedone (1944) 63 CA 2d 169.

V. A STATEWIDE DICTUM PROMOTES UNIFORM SUMMARY JUDGMENT REVIEW

As noted in WILSON's Petition for Review to California Supreme Court, a dictum was proposed that would require all California Appellate Courts to review Summary Judgments identically, so that no one is given preferential treatment regarding existing case law. . Currently, some courts review for "abuse of discretion", whereas others, such as this court conduct an "independant review".

The proposed dictum, patterned after Saldana, would require the appellate courts to check the case for any abuses ((such as Hejmadi v AMFAC (1988) 202 CA 3d 525 (if trial court finds pleadings defective it has discretion to grant opposing party leave to amend complaint), Nazar v Rodeffer (party asserting potential claim of fraud via CCP 437c (h) entitled to continuance), etc.)) recognized under current Summary Judgment Law (CCP 437c), and then review "independantly". (See Request for Judicial Notice of WILSON's Petition for Review submitted to California Supreme Court).

The relevance to WILSON's case is that if this had been done, WILSON's prior judgment would have been automatically reversed.

VI. THE TRIAL COURT ERRED IN SANCTION REQUESTS

a. Defendants request for sanctions under CCP 128.5 was in bad faith

Defendants filed a motion for monetary sanctions under 128.5 (C.T. 390-398). Their basis was that the current litigation "involves the same facts as the 1993 litigation" (C.T. 393) and "the arguement that the contended acts were fraudulent and not previously llitigated in the action for negligence is frivolous" (C.T. 394). As demonstrated in the earlier discussions regarding Ball and Fairchild, this is not true. BEGAN DEFENDANTS motion for sanctions was nothing more than a desire to play off the obvious bias of Judge Lane. As shown in their motion to dismiss, they still contended that WILSON's current complaint was for confidential communications, which it is not. (C.T. 114, lines 8,9,10).

THE APPELLATE DECISION IGNORED AND OMITTED THE FACTS THAT DEMONSTRATE JUDGE PECK WAS BIASED REGARDING WILSON'S REQUEST FOR SANCTIONS

A. WILSON's request for sanctions was meritorious

As noted, WILSON requested sanctions (C.T. 417-425) in opposition to defendants motion for sanctions, to be heard on September 16, 1997. WILSON's basis was that "the motion for reconsideration for which the defendants request sanctions has not yet been heard".(C.T. 419)

Judge Peck denied WILSON's request for sanctions but continued

BEGAN DEFENDANTS motion to "trail the ruling on plaintiff's motion for reconsideration sceduled for October 3, 1997. (C.T. 426)

B. The Appellate Decision ignored and omitted the facts that demonstrate Judge Peck should have recused himself because he could not and did not act impartially

Regarding Wilson's claim of bias of Judge Peck, the Appellate court concluded "we have examined the record and find that Judge Peck acted impartially". WILSON AGAIN provides the same facts which demonstrate as a matter of law that Judge Peck did not act impartially.

Regarding Grounds for disqualification of a Judge, in accordance with CCP 170.1(a)(6)(C), " a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial".

Judge Peck participated in an appellate review of WILSON's traffic citation. See WILSON's declaration, paragraph 2, et.al.

Judge Peck acknowledged that he participated in an appellate review of a traffic citation regarding WILSON. (R.T. 41, line 21). Since WILSON had received the decision just prior to the hearing (R.T. 41, line 19,20) he was concerned about Judge Peck's potential bias because the ruling did not address the fact that Commissioner Covarruias violated the evidence code. (R.T. 42, lines 3-6). Moreover, since Judge Peck did not issue any tentative ruling on BEGAN DEFENDANTS request for sanctions, WILSON was concerned that Judge Peck may be concealing his bias by not issuing a tentative ruling that could assist WILSON in deciding whether to make a peremptory challenge. (R.T. 42, lines 10,11). Judge Peck admitted this. (R.T. 42, lines 12-16). Judge Peck already had a demonstrated bias because he noted that WILSON had "already filed" a peremptory challenge. (R.T. 42, lines 14,15)

THE APPELLATE COURT DECISION COMPLETELY OMITTEDWILSON'S VALID CLAIM THAT JUDGE LANE WAS BIASED IN DETERMINING WILSON A VEXATIOUS LITIGANT

Pacific Etc Conference of United Methodist Church v. Superior Court (1978) 82 CA 3d 72;147 Cal. Rptr. 44, defines Bias "as applied to a judge is defined as...a predisposition to decide a cause or issue in a certain way."

At the beginning of the hearing, before she even started hearing any of the facts, Judge Lane stated "I cannot dismiss the action because you filed a first amended complaint. I'm tentatively thinking today of declaring you a vexatious litigant." R.T. p.1, lines 21-26.

VII. WILSON'S OPPOSITION TO MOTION TO STRIKE IS A VALID CLAIM

CCP 435 , Motion to Strike allows "any party to file a notice of motion to strike the whole or any part of a complaint".

BEGAN DEFENDANTS main basis for their motions to strike (C.T. 47-56, 235-238, 311-317) is CCP425.13 and Central Pathology Service Medical Clinic v. Superior Court (1992) 3 Cal.4th 181,"whenever an injured party seeks punitive damages for an injury directly related to a physician acting within the scope of services for which he is licensed.."

In opposition, (C.T. 152-191,251-252,318-321) WILSON provided copies of the scope of services for an orthpedic surgeon, psychiatrist, and neurologist, along with an American Medical Association definition of carpal tunnel syndrome as provided to U.S. Supreme Court, all of which demonstrate BEGAN DEFENDANTS were not acting within "scope of services" according to medical associations. Central Pathology did not have

"scope of services definitions at the time of their decision. In Waters v. Bourhis (1985) 40 C3d 424, the Court emphasized the importance of physicians performing in scope of services as defined by their respective professions because they didn't want "psychologists performing open heart surgery". This court should carefully consider the implications of granting BEGAN DEFENDANTS Motion to Strike. An Orthpedic Surgeon can say a person with a neurological problem has a psychological problem, a podiatrist can say a person with a heart problem has a psychological problem, a urologist can say a person with a brain tumor has a dermatological problem, without any fear of punitive damages.

VIII. JUDGE LANE SHOULD NOT HEAR ANY FUTURE ACTIONS DUE TO DEMONSTRATED BIAS IN DETERMINING WILSON A VEXATIOUS LITIGANT

a. Judge Lane's ruling and prefiling order is not based upon and did not address applicable case law and was biased against Wilson, because Wilson is not a vexatious litigant.

According to CCP 391 (a) (2) (ii), a vexatious litigant is one who attempts to relitigate "The cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined."

As previously noted, WILSON's original complaint (written by an attorney who "bowed out" after the complaint was filed) was for negligence in disclosing confidential communications. C. T. , Vol. I, p 22-25. WILSON's second complaint was for DEFENDANT BEGAN's fraudulent witholding of evidence and information regarding information that was not confided. C.T., Vol. I, p. 212-229.

As relevent case law, WILSON cited Ball v Stevens (1945) 68 C.A.

2d 843 "Ball" a case involving a person who originally sued regarding a private road and then sued later regarding the same road, but alleging it a public road. It was upheld on basis that there were different rights involved.

WILSON demonstrated that BEGAN DEFENDANTS did plead that they had a right to disclose confidential information to WILSON's employer regarding work related injury. C. T. Vol. II, p.384,lines 4-27. However, regarding his new complaint WILSON demonstrated that BEGAN DEFENDANTS do not have a right to disclose information that was not confided. Therefore the parallel to "Ball" is that in the first complaint BEGAN DEFENDANTS could plead they had a right, but in the second complaint they didn't have a right.

b. The Superior Court failed to offer any reasons or any valid reasons for WILSON's case law.

For "Ball"
The Superior Court referred to Ball as an "ancient case".

For "Zambrano" and "Derose"
The Superior Court asked how"Zambrano" and "DeRose" was spelled.

For other cases
When WILSON provided a list of specific questions to the court (R.T.,page 29, lines 13-16) in an attempt open meaningful dialogue regarding his case law, the Superior Court responded,"this is not the time to quiz the judge". R. T. Page 48, line 25, 26.

For "Natural"
When WILSON attempted to discuss his case law regarding justiciable "res judicata" regarding this court's prior dcision, the Superior Court stated "I know all about the appellate court's decision".

R.T., page 39, line 7-11.

c. The Superior Court was biased against WILSON by attempting to deprive WILSON's right to appeal

The Superior Court attempted to deprive WILSON of his right to appeal when it ruled that "the vexatious litigant statutes do not appear to authorize dismissal of this action" C. T. Vol I, page 257, even though CCP 391.4 clearly states that "when security that has been ordered furnished is not furnished as ordered, the litigation shall be dismissed". Even though WILSON informed the Superior Court prior to the hearing that he had limited financial resources,C.T., page 254, lines 6,7, the Superior Court granted BEGAN DFENDANTS total amount request. Most Judges can determine what a reasonable figure will be for the costs. In this case the reasonable figure for costs was actually unreasonable, since there was $21,867 left, after BEGAN DEFENDANTS "costs".

When WILSON informed this court through his petition for writ of mandate, even after WILSON posted the 30,000 bond, this court (presumably) required the Superior Court to rule according to law as if WILSON had not posted the 30,000 bond. (Exhibit 2) . The reason this is being presumed is because the Superior Court didn't want to rule according to law, even after being required to do so. This is demonstrated by the Superior Court's action following WILSON's request for reconsideration. C. T. , Vol. II, pages 430-451. According to law, if an action is frivolous and toally without merit a Judge can grant a request for sanctions under CCP 128.5. However, as shown in the previous discussion of res judicata WILSON's current action has substantial merit. Judge Lanes requirement for WILSON to post 30,000 bond was an act out of reasonable bounds since WILSON stands a reasonable opportunity of reversal in light of Ball and Fairchild.

Judges that knowingly ignore the rule of law have been disciplined for their actions. Ryan v Commission, supra at 541-542, Reports

of Commission on Judicial Performance 1988 #34

IX. CONCLUSION

For the forgoing reasons, the petition should be granted.

Robert Wilson
Plaintiff and Appellant in Pro Per

DECLARATION OF ROBERT C. WILSON

I, ROBERT C. WILSON declare as follows:

I am the Plaintiff and Appellant in this appeal.

1. When I first received this court's opinion in the mail in the prior action, on page 6 I only saw where the court, in addressing my issue of judicial bias, did not state what Judge Hunter stated according to the record. I fell against the wall in the after hours

post office said "it doesn't matter what I say the record says or what the record actually says because the court in just say whatever they want about the record in their opinion. I became very emotional and upset regarding this court's opinion. At the time I was also homeless, without any source of income, and handicapped such that I was unable to work anywhere. Because the court's opinion addressed the issue of judicial bias on the same page that they discussed the "Wilson failed to show.." I was unable to see the issue.

2. The Officer informed me that I was "impeding the traffic" going up the ConejoGrade and when I got to the top of the hill I was "speeding". At that time, I informed the officer that my auto was' malfunctioning and it was "impossible" for my auto to be "speeding". The Officer dropped his claim of "speeding" and cited me for "impeding the traffic".
I appeared before Commissioner Covarrubias on the traffic citation for "impeding the traffic", before Officer Even began to testify, Commissioner Covarrubias began asking the officer numerous leading questions. I objected to Commissioner Covarrubias' questions as leading questions. Commissioner Covarrubias overruled my objections and continued to ask the Officer Additional leading questions. During my cross-examination, I asked the Officer How could I have been "speeding" and "impeding the traffic?". He replied to me "that's a good question". As part of my appeal to the superior court, I raised the issue that Commissioner Covarrubias violated the rules of evidence and that the Officer's Testimony was not credible since he by his own admission stated that the traffic citations were impossible.

My appeal was denied. I attempted to request transfer to this court for review, which was also denied.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated August 12, 1998.

Robert Wilson

Declararant

REQUEST FOR JUDICIAL NOTICE

The appealing party respectfully requests that the court take judicial notice, through Evidence

Code 459(a)(2)"the reviewing court may take judicial notice of any matter specified in section

452",specifically the pleadings, records, and materials contained within the court file entitled Robert

Wilson , Jr. v. Micheal D. Began, M.D. and Ocean Orthopedic Surgery and Sports Medical Group,

Ventura County Superior Court Case No. CIV 136084. The litigation was filed on September 3,

1993.

This request for judicial notice also includes this court's file in the prior action entitled Robert C.

Wilson v. Micheal D. Began, Ocean Orthopedic Surgery and Sports Medical Group, 2nd Appellate

District Division 6 Case No. B087557.

This request for judicial notice further includes the plaintiff's Petition for Review to the California

Supreme Court, served on the defendants, as well as the 2nd Appellate District Division 6, on

February 20, 1996, and the California Supreme Court's denial of review, filed April 10, 1996.

Finally, this request for judicial notice includes the plaintiff's Petition for Writ of Certiori to the

United States Supreme Court, served on the defendants on July 9, 1996, and the court's denial of

hearing, dated December 2, 1996.

Dated: August 12, 1998

Robert

Wilson

Plaintiff and

Appellant in Pro Per

Second Appellate District, Division Six, No. B118154

Court Of Appeal

Robert Wilson Jr., Appellant

V

FILED
January 11, 1999
Joseph Lane, Clerk

Michael D.Began, Et.Al, Respondents

Appellant's Petition for Rehearing DENIED

s/ Gilbert
Justice

January 12, 1999

Robert Wilson
P.O. Box 9
Summerland, CA 93067

Case No. B118154
Court of Appeal
2nd Appellate District, Division 6
200 East Santa Clara
Ventura, CA

(ADDITIONAL) LETTER OF ERRATA

TO: JUSTICE GILBERT, STONE, AND YEGAN:

Although the case law and issue was previously discussed in the briefs and petition for rehearing, WILSON respectfully requests this court to note the following discussion in light of Natural Soda Products Co. V. City of Los Angeles 109 CA 2d 440, "If a finding or determination of an issue was unnecessary to the judgment, it will not have the effect of a collateral estoppel".

Specifically, WILSON respectfully requests this court note that the prior judgment was for a complaint of negligence in disclosing confidential communications. This court applied the independant review approach that "identified the issues framed by the pleadings regarding the complaint of negligence in disclosing confidential communications". In it's opinion, this court determined a fraud discovery date based on an assumption that "WILSON contended that BEGAN concealed or misrepresented the existence of his letter".

In other words, as WILSON understands, since the prior judgment did state a discovery date for fraud as February 19, 1992, BEGAN cannot impliedly assert collateral estoppel, since the prior judgment did not necessitate tolling the statute of limitations for negligence in disclosing confidential

unications.

eover, since this court could only "identify the issues framed
e pleadings of negligence in disclosing confidential
munications, not only was the fraud discovery date
cessary to the prior judgment, it was not , as a matter of law,
of the independant review approach that is afforded
mary judgment.

ectfully submitted,

rt Wilson

llant in Pro Per

No. B118154